

**MINUTES OF
FAUQUIER COUNTY BOARD OF ZONING APPEALS
OCTOBER 6, 2005**

**AN ADJOURNED MEETING OF THE FAUQUIER COUNTY BOARD OF
ZONING APPEALS WAS HELD OCTOBER 6, 2005 AT 9:45 A.M. IN
WARRENTON, VIRGINIA**

Members present were Mr. John Meadows, Chairperson; Mrs. Margaret Mailler, Vice-Chairperson; Mr. James W. Van Luven, Secretary; Mrs. Carolyn Bowen; and Mr. Serf Guerra. Also present was Mr. Fred Hodge, Senior Planner.

Mr. Hodge reviewed the site visit agenda. He stated that there would be five site visits as follows:

1. Frederick Ketz at 9:55 a.m.
2. Robert and Patricia Duvall at 10:10 a.m.
3. Dennis Hite at 10:25 a.m.
4. STEICO, Inc., at 10:55 a.m.
5. Horacio Magalhaes at 11:20 a.m.

With no further business, the meeting was adjourned at 9:50a.m., to reconvene at 2:00p.m. at 10 Hotel Street, Warren Green Meeting Room, Warrenton, Virginia.

MEETING:

The Fauquier County Board of Zoning Appeals held its regularly scheduled meeting on Thursday, October 6, 2005, beginning at 2:00 P.M. at the Warren Green Meeting Room, 10 Hotel Street, Warrenton, Virginia. Members present were Mr. John Meadows, Chairperson; Mrs. Margaret Mailler, Vice-Chairperson; Mr. James W. Van Luven, Secretary; Mrs. Carolyn Bowen; Mr. Roger R. Martella, Jr.; and Mr. Serf Guerra. Also present were Ms. Tracy Gallehr, Deputy County Attorney; Ms. Kimberley Johnson, Zoning Administrator; Mr. Todd Benson, Assistant Zoning Administrator; Mr. Fred Hodge, Senior Planner; and Mrs. Debbie Dotson, Planning Associate. Absent was Mr. Maximilian A. Tufts, Jr.

MINUTES: On a motion made by Mr. Van Luven and seconded by Mr. Guerra, the BZA moved to approve the September 1, 2005 minutes as amended:

- Page 2, third paragraph, change "Leach" to "Neish".

The motion carried 6-0, with Mr. Tufts absent.

LETTERS OF NOTIFICATION AND PUBLIC NOTICE: Mrs. Dotson read the Public Hearing protocol. Mr. Hodge stated, that to the best of his knowledge, the cases

before the Board of Zoning Appeals for a public hearing had been properly advertised, posted, and letters of notification sent to adjoining property owners.

SPECIAL PERMIT #SPPT05-CR-032, DENNIS G. & MARY L. HITE (OWNERS)

Owners are requesting special permit approval to locate a small contracting business as a home occupation, PIN #7923-39-1149-000, located at 4115 Dumfries Road, Cedar Run District, Catlett, Virginia.

Fred Hodge presented the staff report.

Dennis Hite, owner, appeared and noted agreement with staff report. Mr. Hite stated that he had removed one old tank truck and two other older vehicles. He stated that the Fire Marshal had been out to the site and he had not received a report from that office.

There was discussion about the remaining unlicensed vehicles, the property being in compliance before the permit was issued, and the number of vehicles to be used under the current special permit application.

Mr. Meadows asked if there were any speakers for or against the application. In that there were none, the public hearing was closed.

The BZA discussed the need for containment in case of a spill, the proposed location for parking the truck, and whether the property should be in compliance before the permit is granted.

Mr. Hite asked the BZA to postpone the application for up to 90 days in order to address the issues discussed.

On a motion made by Mr. Guerra and seconded by Mrs. Mailler, the BZA agreed to accept the applicant's postponement.

The motion carried 6-0, with Mr. Tufts being absent.

APPEAL #ZNAP06-MA-001, THE SALAHY FAMILY LIMITED PARTNERSHIP (OWNER)

Appellants are appealing a decision of the Zoning Administrator regarding a violation of Special Exception conditions approved by the Fauquier County Board of Supervisors. The properties are identified as PIN #5998-87-0439-000 and #5998-88-4344-000, located at 14141 Hume Road, Marshall District, Hume, Virginia. **Note: This is a public meeting not a public hearing.**

Mrs. Bowen disqualified herself from any vote and/or discussion on this application based on her previous position as Zoning Administrator during which she made a number of decisions related to the property and use.

Mr. Todd Benson, Assistant Zoning Administrator, summarized the issue and the basis for his determination of violation, as set forth in his memo to the BZA.

Mr. Meadows asked if the BZA members had any questions of Mr. Benson.

Mr. Martella asked Mr. Benson when the Zoning Office first learned of the subject event and potential violation. Mr. Benson stated that several complaints were received either Monday or Tuesday after the event, bringing it to staff's attention.

Mr. Martella asked how the staff would have handled the event had the staff received notice from the applicant prior to the event that it was a "private party." Mr. Benson stated that he could not speculate on what the response would have been.

Mr. Martella asked about amplified music and fireworks. Mr. Benson stated that outdoor amplified music was not allowed for an event under the special exception conditions and fireworks are not allowed at all. Mr. Martella asked if a private person could have a party that lasted past 11:00 p.m. with amplified music and fireworks. Mr. Benson responded that yes a private person could have a party with amplified music but the music could not go past 11:00 p.m. due to a County noise ordinance. Mr. Benson indicated he did not know the requirements for fireworks.

Mr. Martella asked Mr. Benson what the remedy would be if the BZA upheld the decision of violation. Mr. Benson discussed the four possible actions. Ms. Johnson noted that the BZA's role in this is to decide whether or not the event was a violation.

Mr. Philip Strother, attorney representing the Salahi family, the family partnership, and Oasis winery presented his arguments for why the subject party did not constitute a violation of the special exception for Oasis, as summarized in his application for appeal. Mr. Strother emphasized that the event was a private party, that no money was exchanged, no fee was collected, and no compensation was paid to Oasis for hosting the party. Mr. Strother submitted additional affidavits to the BZA members, copies of which are attached to and made a part of the minutes. Mr. Strother provided a summary of his argument and the basis for his appeal of the decision made by the Assistant Zoning Administrator.

Mr. Meadows asked if the BZA members had any questions for Mr. Strother.

Mr. Guerra asked Mr. Strother if there was a guest list available. Mr. Strother stated he did not have it with him but that one could be provided to the BZA.

Mr. Martella asked Mr. Strother if the BZA determined that this was not a private party would he then agree that it was a Class C event. Mr. Strother responded that the County's position characterizing a private party as an event would extend into private citizen's lives in an extreme fashion. Mr. Martella stated that the invitations that the Salahi's mailed out did not have their names on it. Mr. Strother disputed the invitation in

the exhibit and presented a different invitation as the official invitation, a copy of which is attached to and made a part of the minutes.

Mr. Meadows stated that both invitations show there were various sponsors of the event, which dispute the statement that there were no sponsors. Mr. Strother stated that it depends on how you define "sponsorship". They are not corporate sponsors in the sense that they received compensation, charged people to attend, or charged the Salahi family for being there. Mr. Strother stated that their presence and participation was a gift to the Salahis.

Mr. Van Luven asked about the banners displayed at the party by Oasis and the sponsors. Mr. Strother agreed that banners were present. Mr. Van Luven noted that such displays provide value to Oasis and the sponsors.

Mr. Martella asked if there had been another event already planned for that same evening. Tareq Salahi, owner of Oasis Winery, stated that another event had been planned but was postponed to accommodate the party to celebrate the Supreme Court's decision. Mr. Martella asked if the purpose of the memo sent to the County regarding the party was to inform the County of the event being cancelled and changed to a personal event. Mr. Salahi indicated yes.

Mr. Meadows asked if there were any other questions.

The BZA took a 5 minute recess.

Tareq Salahi, owner of Oasis Winery, stated that he and his wife live in the winery, the person in the photos and pictures presented is his wife, and the proposed text amendment drafted three months ago which includes a limit on personal parties is not part of the Oasis' approved special exception.

Michaele Salahi, stated that she represents the State of Virginia in the Meet Virginia Campaign. She expressed concerns that the BZA had already reached a decision in this appeal, that they are being harassed by neighbors, and that she was assured the fireworks were legal by the deputy providing security at the party.

Mr. Meadows asked if the BZA members had any questions.

Mr. Benson noted that the winery text amendment referred to by Mr. Salahi had no bearing on the issue at hand, that an event is not defined by whether or not fees are charged, and the fact that County staff had not received the memo from Oasis changing the event until after the violation was cited. He further noted that all attendees of the party were clearly not there as personal friends of the Salahi's; for instance, evidence had been provided that two government officials attended this event at the expense of the taxpayer.

Mr. Guerra asked Mr. Benson if he felt it was necessary to obtain the guest list. Mr. Benson stated that the only benefit would be to have a head count of who attended the party.

Mr. Martella asked Mr. Benson if he was Acting Zoning Administrator during the investigation of the complaint and if the authority was delegated to him. Mr. Benson stated that yes he was Acting Zoning Administrator and the authority was delegated to him.

Mrs. Gallehr stated that she could provide legal counsel in a Closed Session.

Mr. Meadows asked if there was any discussion from the BZA.

The BZA discussed the relevance of the guest list and decided it was not necessary to obtain it.

On a motion made by Mr. Guerra and seconded by Mr. Van Luven, the BZA postponed the decision until the November 2005 meeting date.

The motion carried 6-0, with Mr. Tufts being absent.

VARIANCE #ZNVA06-SC-001, FREDERICK KETZ (OWNER)

Applicant is seeking a variance of four feet, six inches from a side property line for a previously constructed structure on the property, PIN #7906-11-1456-000, located at 5423 Old Alexandria Turnpike, Scott District, Warrenton, Virginia.

Mr. Hodge stated that a BZA site visit was made earlier that day. He reviewed the staff report, a copy of which is attached to and made a part of the minutes.

Charlotte Wessels, representative, appeared and noted agreement with the staff report.

Mr. Meadows asked if the BZA members had any questions of the applicant.

Mr. Van Luven asked Ms. Wessels if there was a sale pending. Ms. Wessels stated that there was a contract on the property.

Mr. Hodge stated that the new owner was planning on placing a commercial office in the existing building so it would not remain as a residence.

Mr. Meadows asked if there were any speakers for or against the application. In that there were none, the public hearing was closed.

Ms. Bowen expressed concern that the zoning was not correctly presented to the BZA by staff and therefore a variance might not be necessary.

There was discussion among the BZA members and staff as to the zoning history of the property, the research done to determine this history, whether or not a building permit had been issued and the impact of the lack of a permit on any other solution.

On a motion made by Mrs. Bowen and seconded by Mrs. Mailler, the BZA moved to postpone the application for further information to be provided.

AYES: Mrs. Mailler, Mrs. Bowen, Mr. Meadows

NAYS: Mr. Guerra, Mr. Martella, Mr. Van Luven

ABSENT: Mr. Tufts

The motion did not carry.

On a motion made by Mr. Van Luven and seconded by Mr. Guerra, the BZA moved to grant the variance to reduce the side yard requirement for the existing structure from 0 feet or 12 feet to 4.6 feet, based on the Board's findings, after due notice and hearing, as provided by §13-406 of the Fauquier County Zoning Ordinance:

- A. The noncompliance was through no fault of the applicant; and
- B. The variance will not impair the purpose and intent of this Ordinance, and
- C. The variance not be detrimental to the use and enjoyment of other property in the immediate vicinity, and
- D. The variance will not create an unsafe condition with respect to other property and/or public streets, and
- E. To force compliance with the minimum yard requirements would cause unreasonable hardship upon the owner.

AYES: Mr. Martella, Mr. Guerra, Mr. Van Luven

NAYS: Mrs. Bowen, Mrs. Mailler, Mr. Meadows

ABSENT: Mr. Tufts

The motion did not carry.

Mr. Meadows stated that the item would be postponed to the next meeting.

VARIANCE #ZNVA06-CT-002, ROBERT, SR., AND PATRICIA DUVALL (OWNERS)

Owners are requesting a variance of 7.9 feet from a side property line for a previously constructed attached garage on the property, PIN 6983-89-4786-000, located at 8158 Poplar Grove Drive, Center District, Warrenton, Virginia.

Mr. Hodge stated that a BZA site visit was made earlier that day. He reviewed the staff report, a copy of which is attached to and made a part of the minutes.

Robert and Patricia Duvall, owners, appeared and noted agreement with the staff report. He stated that he did not know that the person who built the garage did not acquire a building permit.

Mr. Meadows asked when the garage was built. Mr. Duvall stated sometime in the 1990's, with the problem discovered in 1995.

Mr. Guerra asked why is this coming before the BZA now and not in 1995 when the error was discovered. Mr. Duvall stated he did not know what to do about it then.

Mrs. Bowen stated that during the site visit she noticed a shed that also might be too close to the property line. She asked Mr. Duvall if he obtained a building permit for the shed which is removable and the pool. Mr. Duvall stated that he put the shed there and did not realize he needed a building permit and that the pool company obtained the building permit for the pool.

Mr. Meadows asked if there were any speakers for or against the application. In that there were none, the public hearing was closed.

Mr. Meadows asked if there was any discussion from the BZA members.

On a motion made by Mr. Martella and seconded by Mr. Van Luven, the BZA moved to postpone the decision until the November 2005 meeting.

The motion carried 6-0, with Mr. Tufts being absent.

SPECIAL PERMIT #SPPT06-CT-008, WARRENTON CHURCH OF CHRIST (OWNER)

Owner is requesting special permit approval to host two night outdoor music concerts on church property November 4th and 11th, 2005, PIN #6985-90-1007-000, #6985-90-2124-000, #6985-90-3212-000, #6985-90-4299-000, #6985-90-5480-000, #6985-90-6591-000, #6985-90-7682-000, and #6985-90-8760-000, located at 6398 Lee Highway Access Drive, Center District, Warrenton, Virginia.

Mr. Hodge reviewed the staff report, a copy of which is attached to and made a part of the minutes.

Jon Justice, Youth Minister, appeared and noted agreement with the staff report.

Mr. Meadows asked if there were any questions of the applicant.

Mr. Martella asked about the police presence that was to be on Rt. 29 the night of the event. Mr. Justice stated the police presence was not there because Major Mauck had determined it was not appropriate and that the condition would put an officer in danger.

Mr. Meadows asked Ms. Johnson if she or her office was contacted by the Sheriff's Office about the condition not being carried out. Ms. Johnson stated she had not received notice. She stated she would look into it.

Mr. Meadows asked if there were any speakers for or against the application. In that there were none, the public hearing was closed.

Mr. Meadows asked if there was any discussion from the BZA.

There was discussion about the condition requiring a police car presence.

On a motion made by Mr. Guerra and seconded by Mrs. Bowen, the BZA moved to grant the special permit, after due notice and hearing, as required by Code of Virginia §15.2-2204 and Section 5-009 of the Fauquier County Code, based upon the following Board findings:

1. The proposed use will not adversely affect the use or development of neighboring properties and will not impair the value of nearby land.
2. The proposed use is in accordance with the applicable zoning district regulations and applicable provisions of the Comprehensive Plan.
3. Pedestrian and vehicular traffic generated by the proposed use will not be hazardous or conflict with existing patterns in the neighborhood.
4. Adequate utility, drainage, parking, loading and other facilities are provided to serve the proposed use.
5. Air quality, surface and groundwater quality and quantity will not be degraded or depleted by the proposed use to an extent that would hinder or discourage appropriate development in nearby areas.
6. The proposed use is consistent with the general standards for special permits.
7. The Board of Zoning Appeals finds the type and quantity of traffic generated by the use will not adversely affect the safety of the road usage on Lee Highway Access Road or adversely affect the neighborhood.

The special permit is granted subject to the following conditions, safeguards, and restrictions upon the proposed uses, as are deemed necessary in the public interest to secure compliance with the provisions of this Ordinance:

1. The music events shall be in general conformance with the drawing and information submitted with the special permit application.
2. Hours for the musical performance shall be limited to 9:30 p.m. until the time specified in the County Code, which is 11:00 p.m. on Fridays and Saturdays, on November 4 and November 11, 2005.
3. The stage/performance area shall be oriented so that the musical performance will be directed toward the Lee Highway Access Road and away from residential structures in Warrenton Lakes subdivision.
4. All activity and parking shall be limited to church owned property. No parking will be permitted on Lee Highway Access Road or neighboring streets.
5. The church shall provide for traffic control at Nordix Drive and the Access Road for ingress/egress into the event.
6. The church shall notify Emergency Services and the Sheriff's Department of the upcoming event.
7. The church shall provide for uniformed police presence during the event.

The motion carried 6-0, with Mr. Tufts being absent.

SPECIAL PERMIT #SPPT06-LE-009, STEICO, INC. (OWNER)

Owner is seeking special permit approval to expand an existing Sheetz convenience store, fast food eating establishment and auto service station on the property, PIN #6980-29-9580-000, located at 10101 James Madison Highway, Lee District, Opal, Virginia.

Mr. Hodge stated that a BZA site visit was made earlier that day. He reviewed the staff report, a copy of which is attached to and made a part of the minutes.

Mark Hyson, attorney, appeared and noted agreement with the staff report with two exceptions. He stated that by their calculations that it would only be a net increase of one parking space rather than the five or six in the staff report. He stated that the eating area does not qualify as part of the calculations for total convenience store area.

Allen Stevens, Sheetz representative, appeared and stated that the plan is to improve the appearance of the store by making it more attractive.

Ron Mislowsky, engineer, appeared representing the application.

John Maxwell, Sheetz representative, appeared representing the application.

There was discussion about the tractor trailer traffic, the water situation, acquiring more land to enlarge the easement, and lighting.

Mr. Meadows asked if there were any speakers for or against the application.

Maria Linardakis, Pete's Park and Eat owner, appeared and stated that there was a severe water problem in the area and she was concerned that this expansion would make it worse.

Pete Linardakis, Pete's Park and Eat owner, appeared and stated that the three previous wells have gone dry and he is working on drilling the fourth.

Mr. Meadows asked if there were any other speakers. In that there were none, the public hearing was closed.

Mr. Meadows asked the BZA if there was any further discussion.

There was discussion about site plan approval by VDOT and the Health Department, acquiring additional information from Fauquier County Water and Sanitation Authority on the water situation in Opal, test wells, public water availability, and possible conditions to the permit.

On a motion made by Mr. Van Luven and seconded by Mr. Guerra, the BZA moved to postpone the application for up to 60 days in order to obtain more information.

The motion carried 6-0, with Mr. Tufts being absent.

SPECIAL PERMIT #SPPT06-MA-010, HORACIO MAGALHAES (OWNER)

Owner is seeking special permit approval for an increase in the maximum building height from 35 feet to 40.3 feet for a residence on the property, PIN #6962-73-5386-000, located at 8297 Oxford Way, Marshall District, Warrenton, Virginia.

Mr. Hodge stated that a BZA site visit was made earlier that day. He reviewed the staff report, a copy of which is attached to and made a part of the minutes.

Lynn Dodson, representative from Dodson Homes, appeared and noted agreement with the staff report.

Mr. Meadows asked if there were any speakers for or against the application. In that there were none, the public hearing was closed.

On a motion made by Mr. Van Luven and seconded by Mrs. Bowen, the BZA moved to grant the special permit, after due notice and hearing, as required by Code of Virginia

§15.2-2204 and Section 5-009 of the Fauquier County Code, based upon the following Board findings:

1. The proposed use will not adversely affect the use or development of neighboring properties and will not impair the value of nearby land.
2. The proposed use is in accordance with the applicable zoning district regulations and applicable provisions of the Comprehensive Plan.
3. Pedestrian and vehicular traffic generated by the proposed use will not be hazardous or conflict with existing patterns in the neighborhood.
4. Adequate utility, drainage, parking, loading and other facilities are provided to serve the proposed use.
5. Air quality, surface and groundwater quality and quantity will not be degraded or depleted by the proposed use to an extent that would hinder or discourage appropriate development in nearby areas.
6. The proposed use is consistent with the general standards for special permits.

The special permit is granted subject to the following conditions, safeguards, and restrictions upon the proposed uses, as are deemed necessary in the public interest to secure compliance with the provisions of this Ordinance:

1. The structure may be constructed to a maximum height of 40.3 feet, as generally shown on the drawings submitted with the special permit application.

The motion carried 6-0, with Mr. Tufts being absent.

OTHER BUSINESS:

Mr. Meadows asked Mrs. Gallehr what the status of the Ketz Variance (ZNVA06-SC-001) is under Robert's Rules of Order since neither motion made earlier in the meeting passed. Mrs. Gallehr stated that the motion is still on the table, still open for debate, and the BZA has the ability to reconsider the item or to leave it unresolved. At the end of the meeting all unresolved items would carry over to the next month by a motion from the Chair.

On a motion made by Mr. Martella and seconded by Mr. Van Luven, the BZA moved to reconsider the Ketz application.

The motion carried 6-0, with Mr. Tufts being absent.

On a motion made by Mr. Van Luven and seconded by Mr. Meadows, the BZA moved to grant the variance to reduce the side yard requirement for the existing structure from 0

feet or 12 feet to 4.6 feet, based on the Board's findings, after due notice and hearing, as provided by §13-406 of the Fauquier County Zoning Ordinance:

- A. The noncompliance was through no fault of the applicant; and
- B. The variance will not impair the purpose and intent of this Ordinance, and
- C. The variance not be detrimental to the use and enjoyment of other property in the immediate vicinity, and
- D. The variance will not create an unsafe condition with respect to other property and/or public streets, and
- E. To force compliance with the minimum yard requirements would cause unreasonable hardship upon the owner.

Mr. Meadows asked for discussion.

Mrs. Bowen stated that she felt staff did not provide enough information for her to make a decision at this time.

Mr. Meadows stated that he felt he could make a decision today, given the standards for this type of variance.

Mr. Meadows called for the vote:

AYES: Mr. Martella, Mr. Guerra, Mr. Van Luven, Mr. Meadows

NAYS: Mrs. Bowen, Mrs. Mailler

ABSENT: Mr. Tufts

The motion carried 4-2, with Mr. Tufts being absent.

Mrs. Bowen asked that an agenda item be added to next month's agenda to discuss an Ordinance change for the filing deadline for BZA applications and also to discuss information needed by the BZA in considering an application.

Mrs. Gallehr asked that a Closed Session meeting be the first item on the agenda in reference to the Oasis Winery appeal.

Mrs. Gallehr stated that it might also be time to discuss a Zoning Ordinance change to allow the Zoning Administrator to grant administrative modifications for certain cases rather than utilizing the variance procedures.

ADJOURNMENT: There being no further business before the BZA, the meeting was adjourned at 5:40 P.M.

Mr. John Meadows, Chairperson

James W. Van Luven, Secretary

Copies of all files and materials presented to the BZA are attached to and become a part of these minutes. A recording of the meeting is on file for one year.